

CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2004 AGENDA

SUBJECT

Special Education: Adopt Regulation 3088.1 and 3088.2 regarding withholding funds to enforce special education compliance



Action



Information



Public Hearing

RECOMMENDATION

Consider comments received during the public comment period and the public hearing and take action to adopt the regulations.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The State Board of Education at the January 2004 meeting approved the Commencement of the rule making process for the proposed regulation. Staff was directed to conduct a public hearing which is scheduled to be held on March 8, 2004 at 8:00 AM. A summary of the public comments and responses to those comments will be prepared by staff as part of the Final Statement of Reasons and submitted as a Last Minute Memorandum to the Board.

SUMMARY OF KEY ISSUES

20 USC Section 1413 requires, among other things, that state education agencies monitor local education agencies to assure compliance with special education laws. 34 CFR 300.197 and Education Code section 56845 (a) and (b) authorize the Superintendent to withhold state and federal funds from a local education agency after reasonable notice and opportunity for a hearing if the superintendent finds the agency out of compliance with special education laws.

This proposed regulation is developed in response to the U.S. Department of Education Office of Special Education Policy (OSEP) expectation that state education agencies have a full continuum of enforcement options to compel compliance with special education laws.

Section 3088.1 specifies the required contents of a hearing notice and the timelines for conducting the hearing prior to making a decision whether to withhold funds. Section 3088.2 specifies when funds shall be withheld if the hearing officer concludes that the local education agency has not presented sufficient proof of compliance or mitigating circumstances precluding compliance. This section also stipulates that the superintendent may apportion state and federal funds previously withheld from the local education agency when it is determined that substantial progress toward compliance with special education laws has been made.

FISCAL ANALYSIS (AS APPROPRIATE)

The proposed regulations do not impose a local cost mandate. There would be minor cost to the State to implement the regulations.

ATTACHMENT

[Attachment 1](#): Notice of Proposed Rulemaking (4 Pages)

[Attachment 2](#): Economic and Fiscal Impact Statement (5 Pages)

[Attachment 3](#): Initial Statement of Reasons (2 Pages)

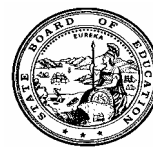
[Attachment 4](#): Proposed Regulation 3088.1, 3088.2 (2 Pages)

STATE OF CALIFORNIA
GOVERNOR

ARNOLD SCHWARTZENEGGER<

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272
Sacramento, CA 95814-5901



TITLE 5. EDUCATION

CALIFORNIA STATE BOARD OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

Withholding Funds – Special Education Mandates

[Notice published January 23, 2004]

The State Board of Education (State Board) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

Program staff will hold a public hearing beginning at **8:00 a.m. on Monday, March 8, 2004**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The State Board requests that any person desiring to present statements or arguments orally notify the Regulations Adoption Coordinator of such intent. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Regulations Adoption Coordinator. The written comment period ends at **5:00 p.m. on Monday, March 8, 2004**. The Board will consider only written comments received by the Regulations Adoption Coordinator or at the Board Office by that time (in addition to those comments received at the public hearing). Written comments for the State Board's consideration should be directed to:

Debra Strain, Regulations Adoption Coordinator
California Department of Education
LEGAL DIVISION
1430 N Street, Room 5319
Sacramento, California 95814
Telephone: (916) 319-0860
FAX: (916) 319-0155

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Section 56845, Education Code; 20 USC Section 1413; 34 CFR 300.197.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Special Education Division on behalf of the Superintendent of Public Instruction proposes that the Board adopt regulation Sections 3088.1 and 3088.2 regarding sanctions for withholding funds to enforce special education compliance authorized by Education Code section 33031. (Reference: 20 USC Section 1413, 34 CFR 300.197 and Education Code section 56845 (a) and (b)).

The purpose for adding Sections 3088.1 and 3088.2 to Title 5, California Code of Regulations, is to establish specific timelines and notice requirements for conducting a hearing which are prerequisites in both Federal and State law prior to withholding funds from local education agencies for noncompliance with special education law.

20 USC Section 1413 requires, among other things, that state education agencies monitor local education agencies to assure compliance with special education laws. 34 CFR 300.197 and Education Code section 56845 (a) and (b) authorize the Superintendent to withhold state and federal funds from a local education agency after reasonable notice and opportunity for a hearing if the superintendent finds the agency out of compliance with special education laws.

Section 3088.1 specifies the required contents of a hearing notice and the timelines for conducting the hearing prior to making a decision whether to withhold funds. Section 3088.2 specifies when funds shall be withheld if the hearing officer concludes that the local education agency has not presented sufficient proof of compliance or mitigating circumstances precluding compliance. This section also stipulates that the superintendent may apportion state and federal funds previously withheld from the local education agency when it is determined that substantial progress toward compliance with special education laws has been made.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Costs to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None

Other non-discretionary cost or savings imposed on local educational agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or businesses: The State Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Affect on small businesses: There is no affect on small businesses because any funds withheld for non-compliance with special education laws are primarily spent on services and not specific equipment, materials and supplies.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5(a)(13), the State Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the State Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed regulations should be directed to:

Dennis Kelleher, Ed.D., Staff Liaison Consultant
California State Advisory Commission on Special Education
California Department of Education
1430 N STREET, ROOM 2401
Sacramento, CA 95814
E-mail: dkellehe@cde.ca.gov
Telephone: (916) 327-0842

Requests for a copy of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other technical information upon which the rulemaking is based or questions on the proposed administrative action may be directed to the Regulations Adoption Coordinator, or to the backup contact person, Najia Rosales, at (916) 319-0860.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Regulations Adoption Coordinator will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at her office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, and the initial statement of reasons. A copy may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the State Board may adopt the proposed regulations substantially as described in this notice. If the State Board makes modifications that are sufficiently related to the originally proposed text, the modified text (with changes clearly indicated) will be available to the public for at least 15 days before the State Board adopts the regulations as revised. Requests for copies of any modified regulations should be sent to the attention of the Regulations Adoption Coordinator at the address indicated above. The State Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, a copy of the Final Statement of Reasons may be obtained by contacting the Regulations Adoption Coordinator at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, the text of the regulations in underline and strikeout, and the Final Statement of Reasons, can be accessed through the California Department of Education's website at <http://www.cde.ca.gov/regulations>.

**Economic and Fiscal Impact Analysis
Proposed Amendment of Title 5, CCR, Regulations
Relating to the Supplemental Services**

Economic and Fiscal...
Attachment 2
Page 1 of 5

The Fiscal Policy Office has reviewed for economic and fiscal impact the proposed (version 08/20/03) regulation adding Sections 3088.1 and 3088.2, of Article 7, Subchapter 1, Chapter 3, Division 1, Title 5, of the California Code of Regulations, relating to Withholding Funds—Special Education Mandates.

What would the proposed regulations do?

The proposed regulations will establish procedures consistent with Federal and State law that enable the Superintendent of Public Instruction (SPI) to withhold funds from a local education agency (LEA) when noncompliance with special education mandates has been determined. The regulation also establishes that the SPI shall continue funding when it is determined that a non-complaint LEA has made substantial progress toward compliance with special education mandates.

Do the proposed regulations impose a local cost mandate?

No. The proposed regulations *would* create a new program or higher level of service in an existing program, however, the activities specified in the regulations are necessary in order to implement the federal and state statute; therefore, any costs associated with the activities are attributable to the federal and state statute and are therefore *not reimbursable*.

Do the proposed regulations impose costs upon the state?

Yes. The proposed regulations *would* impose costs upon the state, however, the activities specified in the regulations are necessary in order to implement the federal and state statute; therefore, any costs associated with the activities are attributable to the federal statute. It is further believed that the department will be able to absorb these additional costs within their existing budgets and resources.

Do the proposed regulations impact local business?

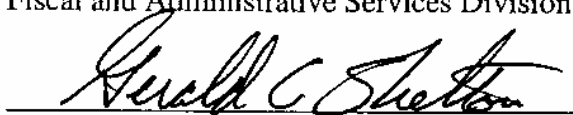
No. The proposed regulations should have no impact on local business.

This analysis reflects the attached Economic and Fiscal Impact Statement.



Donald E. Killmer, Consultant
Fiscal and Administrative Services Division

08/26/03
Date



Gerald C. Shelton, Director
Fiscal and Administrative Services Division

8/26/03
Date

STATE OF CALIFORNIA

ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)

STD. 399 (Rev. 2-98)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME Education	CONTACT PERSON Don Killmer	TELEPHONE NUMBER 323-2591
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Withholding Funds - Special Education Mandates (version 08/20/03)		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

A. ESTIMATED PRIVATE SECTOR COST IMPACTS (Include calculations and assumptions in the rulemaking record.)

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|---|---|
| <input type="checkbox"/> a. Impacts businesses and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance standards |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input type="checkbox"/> h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) _____

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. Enter the total number of businesses impacted: _____ Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

3. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas): _____

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here?

☐ Yes ☐ No If yes, explain briefly: _____

B. ESTIMATED COSTS (Include calculations and assumptions in the rulemaking record.)

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____

a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____

c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____

d. Describe other economic costs that may occur: _____

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

2. If multiple industries are impacted, enter the share of total costs for each industry: _____
3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *(Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.):* \$ _____
4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit: \$ _____ and the number of units: _____
5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: _____
- Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: _____
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority? Explain: _____
3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

D. ALTERNATIVES TO THE REGULATION *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- | | | |
|----------------|-------------------|----------------|
| Regulation: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No Explain: _____

E. MAJOR REGULATIONS *(Include calculations and assumptions in the rulemaking record.)*

Cal/EPA boards, offices and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont. (STD. 399, Rev. 2-98)*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No *(If No, skip the rest of this section)*
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
- Alternative 1: _____
- Alternative 2: _____
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
- | | | |
|----------------|----------|---------------------------------|
| Regulation: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 1: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 2: | \$ _____ | Cost-effectiveness ratio: _____ |

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)
- ☐ b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)
- ☒ 2. Additional expenditures of approximately \$ TBA in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☒ a. implements the Federal mandate contained in Public Law 107-110 "No Child Left Behind Act of 2001"
- ☐ b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____
- ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)
- ☐ d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;
- ☐ e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ of the _____ Code;
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ _____ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.

ECONOMIC AND FISCAL IMPACT STATEMENT *cont.* (STD. 399, Rev. 2-98)




- ☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other.

B. FISCAL EFFECT ON STATE GOVERNMENT *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☒ 1. Additional expenditures of approximately \$ Unknown in the current State Fiscal Year. It is anticipated that State agencies will:
- ☒ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☐ 4. Other.

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)*

- ☐ 1. Additional expenditures of approximately \$ _____ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ _____ in the current State Fiscal Year.
- ☒ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
- ☐ 4. Other.

SIGNATURE		TITLE	
		Ed. Fiscal Services Consultant	
08/26/03			
AGENCY SECRETARY ¹	PROGRAM BUDGET MANAGER		DATE
APPROVAL/CONCURRENCE		Chief Deputy Superintendent	8/26/03
DEPARTMENT OF FINANCE ²	PROGRAM BUDGET MANAGER		DATE
APPROVAL/CONCURRENCE			10/9/03

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Initial Statement of Reasons Regulation 3088.1 & 3088.2

20 USC 1413; 34 CFR 300.197; EC 56845 and EC 33031 Withholding Funds for noncompliance

SPECIFIC PURPOSE OF THE REGULATION.

The proposed regulation will establish procedures consistent with Federal and State law that enable the Superintendent of Public Instruction to withhold funds from a local education agency when noncompliance with special education mandates has been determined. The regulation also establishes that the superintendent shall continue funding when it is determined that a non-complaint local education agency has made substantial progress toward compliance with special education mandates.

NECESSITY/RATIONALE

Proposed regulations Section 3088.1 and 3088.2 establish specific timelines and notice requirements for conducting a hearing which are prerequisites in both Federal and State law prior to withholding funds for noncompliance.

The U.S. Department of Education, Office of Special Education Programs (OSEP) expects state education agencies to monitor and hold local education agencies (LEAs) accountable for compliance with the provision of the Individuals with Disabilities Education Act by developing and implementing policies, procedures and regulations to enforce Federal special education laws and regulations under 20 USC 1413 and, 34 CFR 300.197. Similar state mandates exist pursuant to California Education Code 56845. Imposing special conditions and withholding funds are implemented when other documented interventions have been attempted, but failed to achieve the desired outcome to bring the local education agency into compliance and the agency has been given an opportunity for a hearing.

Failure of the California Department of Education (CDE) to adequately enforce compliance in the past has resulted in the imposition by OSEP of special conditions against California's Federal special education grant. Through the development and implementation of the Quality Assurance Process, which incorporates monitoring reviews, procedural safeguard referrals and complaint management, the special conditions imposed against CDE have been removed by OSEP with the understanding that the Special Education Division will monitor and enforce Federal and State laws to assure local education agency compliance .

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The lack of a continuum of enforcement procedures to include withholding of funds from non compliant local education agencies will result in increased legal costs from

litigation against the state brought by advocates and parents representing students with disabilities.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives to establishing regulations for conducting a hearing prior to withholding funds from non compliant local education agencies are available since both Federal and State law require a hearing prior to withholding funds.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT

No alternatives that would lessen any adverse impact have been identified

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT

The CDE imposed special conditions against four districts in 2002, San Diego Unified, Los Angeles Unified, San Francisco Unified and Live Oak School District with the notification that the process to withhold funds for non-compliance with Federal and State Law would be initiated if immediate corrective actions were not taken within a specific time frame. Imposing special conditions upon these local education agencies along with the threat of withholding funds in these four cases brought about the desired outcome of compliance with special education laws when other previously tried means of intervention had failed. The Special Education Division was gratified that agreement was reached with these districts without having to resort to withholding funds.

As a result of imposing special conditions against these four districts, the number of long term noncompliance special education items among all local education agencies has diminished substantially.

Title 5. EDUCATION

Division 1. State Department of Education

Chapter 3. Handicapped Children

SUBCHAPTER 1. SPECIAL EDUCATION

Article 7. Procedural Safeguards

Add §§ 3088.1 and 3088.2 to read:

§ 3088.1. Sanctions: Withholding Funds to Enforce Special Education Compliance.

(a) Prior to withholding funds pursuant to subdivision (a) of Education Code Section 56845, the Superintendent shall provide a local education agency with a reasonable notice and an opportunity for a hearing as follows:

(1) The department shall send the agency a written notice by certified mail:

(A) Stating the intent to withhold funds for noncompliance;

(B) Describing the nature of the noncompliance, and the specific corrective action (or actions) that the agency must take by an exact date (or dates) to come into compliance;

(C) Summarizing efforts to verify that required corrective actions have not already been taken by the agency;

(D) Specifying the approximate amount of funds to be withheld and the anticipated timing of the withholding; and

(E) Advising the agency of the opportunity for a hearing prior to the withholding, and the date by which the agency must deliver to the department in writing a request for a hearing, which date may be no less than 20 calendar days after the notice is received by the agency.

(2) If an agency requests a hearing pursuant to subparagraph (E) of paragraph (1):

(A) The department shall schedule the hearing within 20 calendar days of the receipt of the request and shall notify the agency of the time and place of the hearing;

(B) A hearing officer shall be assigned by the department to conduct the hearing;

(C) An audiotape of the hearing shall be made;

(D) The time allotted for the hearing shall be one hour;

(E) Technical rules of evidence shall not apply at the hearing, but relevant written evidence or oral testimony may be submitted;

35 (F) Facts and arguments presented by the agency shall focus exclusively on
36 what the agency has done to correct the noncompliance and/or whether
37 mitigating factors have prevented the agency from the initiating or completing
38 corrective action(s).

39 (3) A hearing conducted pursuant to paragraph (2) shall not reopen any finding of
40 noncompliance or any corrective action that has been ordered. The hearing officer's
41 purpose shall be to determine whether the agency presents sufficient proof of corrective
42 action (s) having been taken or of the presence of mitigating factors to justify either no
43 withholding of funds or a modification of intended withholding of funds.

44 (b) If a hearing is held pursuant to subdivision (a), the hearing officer shall submit a
45 recommendation to the Superintendent within 20 calendar days of the hearing's
46 conclusion. Upon considering the hearing officer's recommendation, the
47 Superintendent shall proceed with the withholding of funds (pursuant to the notice of
48 intent), modify the amount and/or timing of the withholding of funds, or not withhold
49 funds, and the affected local education agency shall be notified accordingly by the
50 department.

51 (c) If a hearing is not held pursuant to subdivision (a), the withholding of funds shall
52 take place pursuant to the written notice of intent delivered to the local education
53 agency.

54 NOTE: Authority cited: Section 56100, Education Code. Reference: Section 56845,
55 Education Code.

56 **§ 3088.2. Enforcement and Withholding of Funds.**

57 (a) If funds are withheld from a local education agency pursuant to subdivision (a) of
58 Education Code Section 56845, the funds may subsequently be apportioned to the
59 agency pursuant to subdivision (b) of Education Code Section 56845 upon the
60 submission to the department of:

61 (a) A written request by the agency; and

62 (b) Evidence that the agency has met the condition for apportionment specified in
63 subdivision (b) of Education Code Section 56845.

64 NOTE: Authority cited: Section 56100, Education Code. Reference: Section 56845,
65 Education Code.